

## **9 FAM 40.6 Notes**

*(TL:VISA-412; 05-17-2002)*

### **9 FAM 40.6 N1 Referral of Cases to Department for Advisory Opinions**

#### **9 FAM 40.6 N1.1 Requests for Department Guidance**

*(TL:VISA-173; 11-10-1997)*

An advisory opinion is to be submitted in any case where a question exists regarding the interpretation or application of law or regulation.

#### **9 FAM 40.6 N1.2 Deferred Issuance Pending Advisory Opinion Receipt**

*(TL:VISA-173; 11-10-1997)*

If the Department's opinion has been requested, a visa may not be issued until the opinion has been officially rendered and communicated to the requesting post.

### **9 FAM 40.6 N2 Effect of INS Lookout Entries**

#### **9 FAM 40.6 N2.1 Effect of Definitive INS Ineligibility Findings**

*(TL:VISA-173; 11-10-1997)*

INS findings of ineligibility generally are entered into the Treasury Enforcement Communication System (TECS), and these entries pass electronically into the Department's CLASS lookout system. If the consular officer determines that an alien is identifiable with the subject of an INS-generated lookout entry indicating a definitive determination of inadmissibility, the consular officer may assume that the finding was correct and may refuse the application under the particular INA section indicated by the INS lookout entry, unless the ineligibility is non-permanent and can be overcome through changed circumstances (e.g., medical or public charge ineligibilities) or the entry relates to an ineligibility which only applies at the port of entry and is not a basis for a visa refusal (e.g., 212(a)(7)). Except in those cases involving non-permanent ineligibilities, the consular officer should not look behind a definitive INS finding or re-adjudicate the alien's eligibility with respect to the provision of inadmissibility described in the INS lookout entry.

## **9 FAM 40.6 N2.2 Processing Refusals Based on INS Findings of Ineligibility**

*(TL:VISA-173; 11-10-1997)*

The consular officer should inform the applicant that the refusal was based on a finding of ineligibility made by INS, without referring to the existence of an INS computer lookout on the applicant. If the subject of a definitive INS entry wishes to pursue his/her application, he/she will require a waiver of ineligibility from the INS (if available). If the alien maintains that the INS finding was erroneous, the consular officer should generally advise the applicant to contact INS directly to request reconsideration of the finding of ineligibility and deletion of any lookout. However, the consular officer may choose to contact INS on behalf of the applicant in appropriate cases, such as where important U.S. interests are at stake or where the consular officer has information that could assist INS in reconsideration of the case.

## **9 FAM 40.6 N2.3 Overcoming a Refusal Based on an INS Finding**

*(TL:VISA-412; 05-17-2002)*

If the consular officer refuses an application based on a definitive INS lookout entry and INS subsequently determines that the finding was erroneous and deletes its entry, then the consular officer may process the case to conclusion and should send in a VISAS CLOK cable requesting deletion of any post-originated CLASS entry which may have been made as a result of the INS entry. If, notwithstanding INS's removal of the entry, the consular officer believes that the facts on which the INS entry were based justify a finding of ineligibility, the case should be referred to the Department for an advisory opinion.

## **9 FAM 40.6 N2.4 Quasi-Refusal Lookout Entries**

*(TL:VISA-173; 11-10-1997)*

If the INS entry is a quasi-refusal ("P") lookout, the entry has no binding effect, and the consular officer should evaluate the derogatory information which formed the basis for the lookout and should adjudicate the applicant's eligibility. If the consular officer determines that the applicant is not inadmissible, the consular officer should issue the visa and annotate it appropriately to ensure that INS port inspectors will understand that the consular officer was aware of the INS "P" lookout and concluded nonetheless that the applicant was eligible. If the consular officer issues a visa over an INS "P" entry, the consular officer should remind the applicant that he/she will be subject to inspection upon arrival in the United States and that INS has the independent authority to deny the alien admission, notwithstanding the alien's valid visa.